
(1976) 07 MAD CK 0011
In the Madras High Court

Gopalakrishnan

APPELLANT

Vs

Commissioner for Workmen's Compensation and Another

RESPONDENT

Date of Decision : 23-07-1976

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Shops and Establishments Act, 1947 — Section 41, 6

Citation : (1977) 1 LLJ 143

Hon'ble Judges : Koshal, J

Bench : Single Bench

Judgement

Koshal, J.—The facts giving rise to this petition under Article 226 of the Constitution of India may be shortly stated. The petitioner was

employed as a salesman by M/s. Parry's Confectionary Limited, Madras, who figures as the second respondent before me, in the year, 1952. He

continued to serve them in that capacity till the 31st of December, 1968. With effect from the 1st of January, 1969, he was promoted as sales

supervisor through a contract, which is evidenced by a letter dated the 26th December, 1968, issued by the second respondent to him. The

relevant portion of that letter is re-produced below;

We have pleasure in informing you that it has been decided to appoint/ confirm/ promote you in/to the Junior Management Staff and to place you to

Cadre 12½G12½ with effect from 1st January, 1969.

2. The salaries we offer are:

From 1-1-1969 to 31-12-1969.RS. 500 p.m.

From 1-1-1970 to 31-12-1970 Rs. 520 p.m.

From 1-1-1971 to 31-12-1971 Rs. 540 p.m.

3 Additionally, you will be entitled to the General Service Terms applicable to your new Grading, as detailed in the enclosure.

4. For the category of staff in which you are now placed, the payment of dearness allowance, merit bonus, commission and annual bonus (hitherto

known as special payment), has ceased. However, taking into regard the financial result of each company, a bonus may be declared for the

financial year, This bonus is payable provided an employee has a minimum attendance of 30 days, during the course of the year. Proportionate

bonus may be paid calculated on the actual earnings by way of salary drawn in the year, in the event service is less than a full year. Bonus will not

be payable in the case of discharge or dismissal for misconduct. Salary only will be reckoned in computing bonus, if any, payable

5. The appointment is subject to the rules and regulations made by company as in force at present, or as amended or extended from time to time,

and to termination by three calendar months"" notice is writing on either side. The company reserves the right to terminate the appointment without

notice, by paying three calendar months" salary in lieu of notice and upon making such payment of salary ""in lieu of notice as aforesaid, the

appointment will terminate, but without prejudice to any antecedent breach of the terms and conditions of this appointment. If, however, you fail to

observe any of the terms and conditions of this appointment, your services will be terminated without notice or payment in lieu thereof.

The letter consists of a printed form having certain blanks which have been filled up in type. Those blanks relate to the various dates and amounts

mentioned in the portion above extracted. For the rest the whole letter is in print, except that the words ""appoint/confirm"" preceding the word

promote"" have been scored out in type. It is noteworthy that the printed portion of Clause 2 of the letter makes provision for rates of salary to be

specified for three years only.

2. The services of the petitioner were terminated by respondent No. 2 with effect from 12th February, 1971, under Clause 5 of the letter.

Aggrieved by their action, the petitioner filed an appeal under Sub-section (2) of Section 41 of the Tamil Nadu Shops and Establishments Act,

1947 (hereinafter referred to as the Act., to the Additional Commissioner for Workmen's Compensation, Madras, who is arrayed before me as

respondent No. 1 and before whom the following three preliminary objections were raised on behalf of respondent No. 2:

(i) The appeal would lie not to respondent No. 1 but to the Additional Commissioner for Workmen's Compensation, Trichy.

(ii) By G.O. Ms. No. 1410, dated 20th March, 1948, the Governor of Tamil Nadu, in exercise of the powers conferred upon him by Section 6 of the Act, had exempted permanently persons employed under a contract for a fixed period from the provisions of Section 41 of the Act, so that the appeal was not maintainable.

(iii) The appeal was liable to be dismissed as being time-barred.

3. In dismissing the appeal as incompetent, respondent No. 1 relied upon G.O. Ms. 1410 mentioned above, taking for granted that the contract

was one to which it applied, but without holding that the contract was contract for a fixed period and without giving any reason that it was so.

4. The order of respondent No. 1 is dated the 4th January, 1973, and aggrieved thereby the petitioner invokes the writ jurisdiction of this Court

with a prayer that the same should be quashed by a writ of certiorari. The promotion was given in the normal course and was subject to the

General Service. Terms applicable to sales supervisors of the company. The tenor of the letter read as a whole leaves no doubt in my mind that the

promotion of the petitioner was made on a regular basis and was to continue even after 1971 on the General Service Terms applicable to the post

held by him and of course subject to the other conditions mentioned in the letter. The absence from Clause 2 of the letter of any reference to the

rates of salary for any period subsequent to 31st December, 1971, is of no assistance to the case of the petitioner. Read with the other contents of

the letter and the fact that the printed portion of that clause makes provision for rates of salary to be specified for three years only, that clause

merely means that the petitioner was to earn an increment in the second year and another in the third year and that thereafter no increment was to

be made available to him. That was why salary for any year subsequent to 1971 did not find a place in the letter. Had the services of the petitioner

as sales supervisor been intended to last for no more than three years, the letter would have specifically stated so. In the absence of a condition to

that effect, I am not prepared to believe that the parties so intended,

5. In my opinion, respondent No. 1 has gone completely wrong in dismissing the appeal on the supposition that the contract between the petitioner

and respondent No. 2 falls within the ambit of the notification by virtue of which the Governor exempted certain persons from the operation of

Section 41 of the Act issued on the 20th of March, 1948. In order that a contract may fulfil the conditions requisite under the notification, it has to

be a contract for a fixed period. It was, therefore, the duty of respondent No. 1 to examine the contract of that type before he could dismiss the

petitioner's appeal. His order is vitiated by his failure to perform that duty.

6. As it is, the question whether the contract between the petitioner and respondent No. 2 is a contract of the type covered by the notification is a

question of law, the question of the letter dated the 26th of December, 1968, mentioned above and, therefore, a pure question of law which I proceed

to answer.

7. Before the petitioner was promoted to the post of sales supervisor with effect from 1st January, 1969, he had served respondent No. 2 for a

period of not less than 17 years and thereafter he was to receive a salary, the scale of which for the first three years is mentioned in Clause 2 of the

letter. It is true that there is no mention therein of the salary for any period subsequent to 31st December, 1971, but that factor, by itself, is not

sufficient for me to hold, as is contended on behalf of respondent No. 2, that the contract was for three years certain with liberty to either party

thereto to terminate it by three months' notice. Learned counsel for respondent No. 2 has drawn my attention to *Percy Edward Warne v.*

Ouchterlony Valley Estate (1938) Ltd [1956] 1 MLJ 556, a Bench decision of this Court in which, according to him, a contract similar to the one in

hand was interpreted as a contract of service for a term certain. In my opinion, however, the contract referred to by him was materially different

from the one with which we are here concerned. In that case the contract of service was contained in a letter dated the 25th September, 1947,

under which the plaintiff was to be paid a salary of Rs. 900 per annum for a probationary period of six months and salary at certain fixed rates for

the next four years in case he was confirmed. The letter also provided for leave ex-India to the employee "within a period of four years". It was in

view of these contents of the letter in that case that Rajamannar, C.J., and

Panchapakesa Ayyar, J., held that it was idle to con-lead that the contract of service was not for a period of four years. In doing so, their Lordships laid emphasis on the class ""within a period of four years occurring in the letter. With all respect, I would unhesitatingly say that the letter was correctly interpreted by the Division Bench, but that the case cited does not furnish any precedent for interpreting the contract in the instant case as one for three years certain determinable by three months" notice on either side. There is no clause in the letter dated the 26th December, 1968, issued by respondent No. 2 to the petitioner such as may be deemed akin to the clause " within a period of four years"" which was clincher in favour of the interpretation arrived at by the Division Bench. The contention raised, therefore, does not find favour with me.

8. Learned counsel for respondent No. 2 has also contended that it is not for this Court to come to an interpretation of the letter different from the one arrived at by respondent No. 1 and for this contention he places reliance on *Agani v. Badri Das*. [1963 I L.L.J. 684]. In that case, a Tribunal had interpreted a document in a certain way, the interpretation given by it not being unreasonable. The High Court differed with the Tribunal and put another interpretation on the document. Their Lordships of the Supreme Court held that the interpretation given by the Tribunal being reasonable, there was no error of law patent on the face of the record and that the High Court did not act within its jurisdiction in upsetting that interpretation and substituting its own. That case is clearly distinguishable from the instant one in which no interpretation at all has been put by respondent No. 1 on the letter of the 26th December, 1968, issued by respondent No. 2 to the petitioner. In fact, no "attempt at such interpretation was made by respondent No. 1, who appears to have thought that if a person had entered into a contract of service, whatever type of contract it might be, the notification issued by the Governor on the 20th March, 1948, would be applicable to it. Although he reproduced the terms of the notification, he failed to appreciate that it applied only to persons having entered into a contract of service for a fixed term only. That is the reason why he did not make any attempt to come to a finding whether or not the contract between the petitioner and respondent No. 2 was of that type. The case cited, therefore, renders no help to the contentions raised on

behalf of respondent No. 2,

9. In the result, I hold that the contract between the petitioner and respondent No. 2 was not a contract for a fixed period, that therefore, the

provisions of the notification issued by the Governor on the 26th March, 1948, were not applicable to it and that the appeal filed by the petitioner

before respondent No. 1 was not incompetent by reason of the contents of that notification. Accordingly, the petition succeeds and the order of

respondent No. 1 holding that the appeal is incompetent is quashed with a direction that the appeal shall be re-heard by him on any other points

that may be raised before him and decided in accordance with law. The parties are left to bear their costs.